Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Special Appeal No.14 of 2006

1. Union of India through Secretary Ministry of Communication Govt. of India, New Delhi.
2. Superintendent of Post Office, Tehri Garhwal.

..... Appellants

Versus

Ashok Negi S/o Suwarn Singh Negi,
Retired Sub Post Master,
R/o Satyeshwar Mohalla, Suman Chowk,
Purani Tehri, Tehri Garhwal.

..... Respondent

Sri Arvind Vashisth, learned Assistant Solicitor General for Union of India / appellants
Sri Manoj Tiwari, learned counsel for the respondent.

Date: 7th July,2006

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma,J.

This special appeal has been filed by the Union of India against the judgment and order dated 27.02.2006 passed by learned Single Judge in Writ Petition No.603 of 2005 (S/S), Ashok Negi versus Union of India and others.

2. The petitioner (respondent herein) filed the petition seeking writ of certiorari to quash the decision taken in the meeting of Circle Relaxation Committee held on 24.6.2004, by which the claim of the petitioner for compassionate appointment was rejected. The representation of the petitioner was decided in compliance of the mandamus issued by this Court

(Irshad Hussain, J.) in writ petition No. 54 (S/S) of 2003 on 02.04.2004.

3. A perusal of the rejection order shows that the petitioner was considered for the appointment in compliance of the order issued in the first writ petition (No.54 (S/S)/2003) filed by the petitioner. Earlier also the petitioner was considered and the ground of rejection was same that the petitioner was not found eligible to be appointed under the 5% quota to be filled up from amongst the candidates who seek appointment under the Dying-in-Harness Rules. For appointment on the compassionate ground the Government of India in the year 1999 has issued an order, contained in Annexure No.2A to the counter affidavit filed by Union of India in W.P.No.603/2005 (S/S), which provides criterion for judging eligibility to give the appointment under the Dying-in-Harness Rules. Since the Government has laid down the criterion for appointment under the Dying-in-Harness Rules and the petitioner was not found eligible to be appointed applying those criteria, therefore the representation/application for appointment has been rejected.

4. The Government Order is legislative in character and have a statutory force. Thus, the order passed by the respondent/Union of India (appellant herein) cannot be said to be arbitrary. It is well settled that compassionate appointment cannot be claimed as a matter of right. It is incorrect to hold that the Department has sat in appeal over the judgment of this Court rather the Department has taken a decision in accordance with the aforesaid Government Order.

Therefore, the judgment of learned Single Judge cannot be sustained.

5. Accordingly, the impugned order is set aside. The order of rejection of the claim of petitioner for compassionate appointment is upheld. The special appeal is allowed. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J.)**
07.07.2006 **07.07.2006**

P. Singh